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13 HILLSTONE RESTAURANT GROUP, INC.

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

SEAN WAGENER, an individual,

Plaintiff,

v.

HILLSTONE RESTAURANT
GROUP, INC., GULFSTREAM
RESTAURANT, and DOES 1 to 50,

Defendants.

Case No.

(State Case No. 30-2022-01248132-CU-
PO-NJC)

**NOTICE OF REMOVAL OF
ACTION UNDER 28 U.S.C. 1441(b)1
(DIVERSITY); DECLARATION OF
ROGER R. BRACKEN**

**TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE
CENTRAL DISTRICT OF CALIFORNIA:**

PLEASE TAKE NOTICE THAT Defendant HILLSTONE RESTAURANT
GROUP, INC. ("DEFENDANT") hereby removes to this Court the state court action
described below. Removal of this action is proper for the following reasons:

1. On March 3, 2022, an action was commenced in the Superior Court of
the State of California in and for the County of Orange, entitled SEAN WAGENER
("PLAINTIFF"), an individual, Plaintiff vs. HILLSTONE RESTAURANT GROUP,
INC.; GULFSTREAM RESTAURANT and DOES 1 to 50, Defendants, as Case

4892-7315-1527.1

Case No.

**NOTICE OF REMOVAL OF ACTION UNDER 28 U.S.C. 1441(b)1 (DIVERSITY); DECLARATION OF
GABRIELLA A. PEDONE**

1 Number 30-2022-01248132-CU-PO-NJC ("Complaint"). A true and correct copy of
 2 PLAINTIFF's Complaint is attached hereto as **Exhibit "A."**

3 2. DEFENDANT was first served a copy of the Complaint on March 8,
 4 2022. A true and correct copy of the Proof of Service of Process is attached hereto as
 5 **Exhibit "B."**

6 3. PLAINTIFF was, at the time he filed the Complaint and still is, a citizen
 7 of the State of California.

8 4. DEFENDANT was, at the time of the filing of this action, and still is,
 9 incorporated under the laws of the State of Delaware, with its principal place of
 10 business in the Phoenix, Arizona, where its high-level officers direct, control and
 11 coordinate the DEFENDANT's activities.

12 5. On April 7, 2022, DEFENDANT filed its Answer to PLAINTIFF's
 13 Complaint along with a Demand for Jury Trial and a Request for Itemization of
 14 Nature and Extent of Damages. DEFENDANT's Answer, Demand for Jury Trial,
 15 and Request for Itemization of Nature and Extent of Damages are attached hereto as
 16 **Exhibits "C", "D", and "E"** respectively.

17 6. Following extensive meet and confer between the parties' counsel of
 18 record, on June 20, 2022 PLAINTIFF filed a dismissal as to defendant "Gulfstream
 19 Restaurant" only, as this named defendant is not a separate entity from
 20 DEFENDANT Hillstone Restaurant Group, Inc., but merely a "dba" of
 21 DEFENDANT. A true and correct copy of the Request for Dismissal as to
 22 Gulfstream Restaurant, filed on June 20, 2022 is attached hereto as **Exhibit "F."**

23 7. This action is a civil action of which this Court has original jurisdiction
 24 under 28 U.S.C. §1332, and is one which may be removed to this Court by
 25 DEFENDANT pursuant to the provisions of 28 U.S.C. §1441(a) in that this is a civil
 26 action between citizens of different states and the matter in controversy exceeds the
 27 sum of \$75,000.00, exclusive of interest and costs. This is evidenced by the
 28 PLAINTIFF's Statement of Damages claiming damages may exceed \$3,032,164.01,

1 served on May 4, 2022. The PLAINTIFF's Statement of Damages is attached hereto
2 as **Exhibit "G."**

3 8. This removal is timely and was filed within thirty (30) days of the filing
4 of the Request for Dismissal of the improperly named defendant Gulfstream
5 Restaurant. The dismissal of this improper party allowed for the removal of this action
6 to Federal Court based on the jurisdictional diversity of the remaining parties to the
7 action.

8 9. The other defendants in this action are fictitiously named, designated as
9 DOES 1 to 50, and their citizenship shall not be considered in determining diversity
10 jurisdiction. 28 U.S.C. §1446(b).

11 10. Pursuant to 28 U.S.C. §1446(a), true and correct copies of all process,
12 pleadings, and orders sent to and received by DEFENDANT in the State Court action
13 are attached hereto as Exhibits "A" through "G".

14
15 DATED: July 8, 2022

**MANNING & KASS
ELLROD, RAMIREZ, TRESTER LLP**

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18 By: 

19 Roger R. Bracken
20 Brian T. Moss
21 Attorneys for Defendant,
22 HILLSTONE RESTAURANT GROUP,
23 INC.
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DECLARATION OF ROGER R. BRACKEN

I, Roger R. Bracken, declare as follows:

1. I am an attorney duly admitted to practice in the courts of the State of California and am a Senior Counsel with Manning & Kass, Ellrod, Ramirez, Trester LLP, attorneys of record for Defendant HILLSTONE RESTAURANT GROUP, INC. ("DEFENDANT"). I have personal knowledge of the facts set forth herein, and if called as a witness, I could and would competently testify thereto. I make this declaration in support of DEFENDANT's Notice of Removal of Action Under 28 U.S.C. §1441(b)1 (diversity).

2. On March 3, 2022, an action was commenced in the Superior Court of the State of California in and for the County of Orange, entitled SEAN WAGENER, an individual, Plaintiff vs. HILLSTONE RESTAURANT GROUP, INC., GULFSTREAM RESTAURANT and DOES 1 through 50, inclusive, Defendants, as Case Number 30-2022-01248132-CU-PO-NJC ("Action"). A true and correct copy of Plaintiff SEAN WAGENER's ("PLAINTIFF") Complaint is attached hereto as **Exhibit "A."**

3. DEFENDANT was first served a copy of PLAINTIFF's Complaint on March 8, 2022. A true and correct copy of the Proof of Service of Process is attached hereto as **Exhibit "B."**

4. PLAINTIFF was, at the time he filed the Action and still is, a citizen of the State of California.

5. DEFENDANT was, at the time of the filing of this Action and still is, a State of Delaware Corporation, with its principal place of business in Phoenix, Arizona, where its high-level officers direct, control and coordinate the DEFENDANT's activities.

6. On April 7, 2022, DEFENDANT filed its Answer to PLAINTIFF's Complaint along with a Demand for Jury Trial and a Request for Itemization of Nature and Extent of Damages. DEFENDANT's Answer, Demand for Jury Trial, and

Request for Itemization of Nature and Extent of Damages are attached hereto as Exhibits "C", "D", and "E" respectively.

7. Following extensive meet and confer between the parties' counsel of record, on June 20, 2022 PLAINTIFF filed a dismissal as to defendant "Gulfstream Restaurant" only, as this named defendant is not a separate entity from DEFENDANT Hillstone Restaurant Group, Inc., but merely a "dba" of DEFENDANT. A true and correct copy of the Request for Dismissal as to Gulfstream Restaurant, filed on June 20, 2022, is attached hereto as **Exhibit "F."**

8. This action is a civil action of which this Court has original jurisdiction under 28 U.S.C. §1332, and is one which may be removed to this Court by DEFENDANT pursuant to the provisions of 28 U.S.C. §1441(a) in that this is a civil action between citizens of different states and the matter in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs. This is evidenced by the PLAINTIFF's Statement of Damages claiming damages may exceed \$3,032,164.01, served on May 4, 2022. The PLAINTIFF's Statement of Damages is attached hereto as **Exhibit "G."**

9. This removal is timely and was filed within thirty (30) days of the filing of the Request for Dismissal of the improperly named defendant Gulfstream Restaurant. The dismissal of this improper party allowed for the removal of this action to Federal Court based on the jurisdictional diversity of the remaining parties to the action.

10. The other defendants in this action are fictitiously named, designated as DOES 1 to 50, and their citizenship shall not be considered in determining diversity jurisdiction. 28 U.S.C. §1446(b).

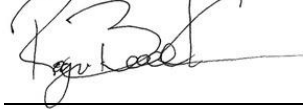
11. Pursuant to 28 U.S.C. §1446(a), true and correct copies of all process, pleadings, and orders sent to and received by DEFENDANT in the State Court action are attached to this Notice of Removal as Exhibits "A" through "G."

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1 I declare under penalty of perjury under the laws of the United States of
2 America that the foregoing is true and correct.

3 Executed on this 8th day of July, 2022, at Costa Mesa, California.

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